IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.9241 of 2007

Narayan Ramchandra Babar ..Petitioner

vs.

Sarjerao Dada Chavan ..Respondent

Shri S.G.Deshmukh for petitioner.
Shri Dilip Bodake for respondent.

CORAM: S.C.DHARMADHIARI J.
20th December, 2007

P.C.

1. This writ petition is directed against the order of the lower Appellate Court dated 15th October, 2007 dismissing the petitioner's appeal and allowing the cross objections.

2. Misc.Civil Appeal No.77 of 2007 was presented on 30th August, 2007 and was decided on 15th November, 2007. That appeal is directed against the order dated 27th August, 2007 in Reg.Civil Suit No.426 of 2006 below Exh.5. The Joint Civil Judge, Jr.Dn., Karad by that order had directed the present petitioner/original defendant to the suit before me to maintain statusquo in respect of the suit property.

3. Aggrieved by that order the petitioner preferred the above appeal which has been

dismissed and at the same time a positive finding has been given in favour of the respondent/original plaintiff by allowing the cross objections (Exh.20). Now, the petitioner is restrained from causing any obstruction to the respondent's possession over the suit property till disposal of the suit.

4. It is not necessary to refer to the rival contentions in any details in as much as the reliance is placed by the original plaintiff upon the sale deed dated 24th August, 2006 executed by common vendor/seller Kalpana Chavan. The petitioner before me also claims on the basis of agreement dated 26th September, 1992 from this lady. The argument is that the sale deed prevails upon mere agreement for sale. However, to my mind, when the cross objections were allowed and the petitioner's appeal was dismissed, something more was to be considered at the prima facie stage and that was whether when the petitioner is sought to be restrained from disturbing the physical possession of the respondent/plaintiff in respect of the suit property, then, atleast prima facie it must be shown that the respondent is in possession of the suit property. That will be on the basis of

the events after the execution of the sale deed in his favour. The Court below could also have looked into the aspect of the physical possession, if any of the petitioner/defendant from 1992 till 2007. To my mind, the lower Appellate Court has failed to apply his mind to the aspect of the respondent's physical possession before reversing/modifying the order of the Trial Court. In such circumstances, the order of the lower Appellate Court is quashed and set aside. Misc.Civil Appeal No.77 of 2007 and Cross objections are restored to its file for being decided afresh in accordance with law on or before 28th February, 2008. Till the lower Appellate Court renders its decision the order of the Trial Court to continue.

5. It is clarified that merely because I have reversed the impugned order of the lower Appellate Court does not mean that I have expressed any opinion even prima facie with regard to the case of both sides. The lower Appellate Court must decide the matter uninfluenced by the order of this Court sending the matter back to it. The matter is remitted because from the order it is not clear whether the respondent is in physical possession. The

petition is disposed of. No order as to costs.

(S.C.DHARMADHIKARI J.)